

CONTESTED ELECTION.

Philadelphia, October, 1867.

COURT OF COMMON PLEAS.

JUDGES ALLISON, PEIRCE AND BREWSTER.

RICHARD M. BATTURS, <i>Clerk of the Orphans' Court.</i>	vs.	JOSEPH MEGARY, <i>Clerk of the Orphans' Court.</i>
WILLIAM Y. CAMPBELL, <i>Register of Wills.</i>		WILLIAM A. LEECH, <i>Register of Wills.</i>
BENJAMIN F. URWILER, <i>City Commissioner.</i>	vs.	JOHN F. BALLIER, <i>City Commissioner.</i>

ARGUMENT

OF THE

HON. WILLIAM B. MANN,

March 20th and 21st, 1868.

AND OF THE

HON. WILLIAM M. MEREDITH,

March 24th, 1868.

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CONTESTED ELECTION CASE.

ARGUMENT OF HON. WM. B. MANN.

May it please the Court, the testimony in this case is not as voluminous as it appears to be, nor will it take so great a time for consideration, as the bulk of it would lead one to believe. The testimony is printed in questions and answers, occupying the centre of the page, presenting the appearance of a rivulet of type with a wide border of margin. The testimony in that way is clearer in its character and appearance.

This case is one for very serious consideration, for upon its determination, in the opinion of the counsel in this case, depends the question whether a fair, pure and honest election can be held in certain parts of the City of Philadelphia. There are a number of divisions well known to this Court, from the contests that have heretofore taken place, where there is such wanton, such studied evasion of duty, dereliction of duty, criminal conduct, and such a determination not to execute the law of the land in the matter of the reception of votes, that gross frauds are constantly committed in these divisions. The manner in which it is done is familiar to this Court, and you are also familiar with the means adopted by the Legislature, in its endeavor to prevent these frauds. This part of the case is curious, and it is no less curious to note the manner in which these election officers evade the Act of Assembly designed to control and regulate their conduct. Take one of these divisions as a sample. The Court is familiar with the fact, that the mode of conducting elections by these people, is to open a poll, disregard the "official list," take the vote of every one who presents himself on their side, without regard to the proof required by the law. The name and residence of voters are not taken, although their names may not be on the list of taxables, and no record is kept to show

who the voters are. In order to prevent this, the Legislature passed the Act of Assembly, wherein it was said, if the election officers were all of one party, that, upon application to the Court, the election for those officers should be set aside, and other election officers should be appointed by the Court to conduct the election. Now, in order to avoid that restriction, it is a practice, as shown in this case, for the parties to get (for instance, in the Sixth Division of the Fourth Ward) one of their own party to vote a Republican ticket, and then they selected him as a representative of that side, and qualified him to be an Inspector. An application was made to this Court to set aside that election, but that individual came into Court and avowed that he was a Republican, and of course we were powerless; and on election day that man took his seat alongside of the rest, and they all voted the Democratic ticket. His Republicanism left him, or as they say on the theatre bills, he appeared in that character for that night only. With these officers thus chosen in defiance of the spirit of the Act of Assembly, they opened the polls, and allowed every man to vote who was known to them, or who came in company with those they approved of, without examination, and without making a record such as the law demands.

Now, what is the law in regard to an election thus held? I do not desire to discuss that question in advance, but simply to allude to it. All the contested election cases that have occurred within the County of Philadelphia, beginning with Skerrett's case, and continuing through Cassidy's case, Kneass' case, and Thompson and Ewing, settles the question definitely, and knowing that, I feel that if I were to attempt to discuss this law now, I would be treading upon ground that has already been well beaten down, and it would be dull and uninteresting, as presenting nothing new and nothing startling in election law. But the Court will observe that the case of Thompson and Ewing was taken up, and decided upon the rule that will arise in this case. In the case of Mr. Cassidy, the Court there had, as they stated, "improvidently" stricken from the petition those parts which alleged that the officers disregarded their duty. Judge Thompson said that was done improvidently; that if those specifications had remained, it would have been the duty of the Court to disregard the election held in those divisions; but as the Court by its action had committed itself not to do that, they did the next best thing, they struck from the return all persons who had voted whose names were not upon the official list, and whose votes had been received without proofs of citizenship, without proof of residence and the payment of taxes. The words

of Judge Thompson are very striking—this Court is familiar with the language. I find, however, in looking at the case, that the whole subject is discussed and ruled in *Thompson vs. Ewing*. There the attempt was made to cast out the entire vote of certain divisions. It was alleged that the officers in these divisions received the votes of persons whose names were not upon the official list, without proof of their qualifications as required by law. The Court, in deciding that case, Judge Ludlow dissenting, decided that they would not strike them out, but this was because there was no proof that this allegation was true. I read from the case of *Thompson vs. Ewing*, the opinion as delivered by Judge Thompson.

Judge Thompson says: “The First Division is attacked upon the ground of misconduct of its officers. * * * * These are certainly serious charges to be made against election officers. The evidence produced to sustain them, showed that *one* of the Inspectors became intoxicated, but the other officers were not shown to be incapacitated for the performance of their duties. * * * It is further alleged that the officers disregarded the directions of the law, in receipt of votes of persons not on the list of taxables, without requiring the proof to entitle them to vote. *This charge is sustained by no witness.*

The Court, therefore, refused to strike out the First Division of the First Ward, upon the ground that the allegation that the officers had received ninety-one votes, and had violated the law in that number of instances, was not established by proof. They go on to state other matters, but the substance of the ruling was, that there was no proof whatever of the fact alleged.

Now, Judge Ludlow, in his opinion, says: “In the 191st specification of the answer, respondent alleges certain acts of omission and commission upon the part of election officers and others, *which, if proved, must, according to the law as established, result in the total rejection of the entire vote there cast*, and we declare that the evidence establishes the allegations thus made. * * * When the return itself is invalidated we must reject the entire vote polled in this division.”

The Court will also find that at the close of his opinion Judge Ludlow takes out from the returns the entire vote of this precinct, and gives his opinion, based upon law, that they ought to be disregarded. In Judge Thompson’s opinion, there is also allusion made to the view entertained by Judge Ludlow, and he refers to the fact that his brother Ludlow was of opinion that the vote ought to be thrown out, but that the record did not

show the fact alleged. Judge Ludlow went so far as to say that because the record did not show that the names of the persons who voted were added and the names of the vouchers also, that that was evidence that it was not done, but the Court did not go that far. I, therefore, take it for granted that where an election is held in an election division, and the officers open the poll, and with a manifest desire to allow anybody to vote, disregard all proof required by the law, and do not keep the list to show that a man who votes is upon the list; that when a foreigner comes he is not required to produce his naturalization papers, and in general do not regard any of the checks that have been provided by law, and thus display a wanton disregard of all law, the Court will vacate that election.

The decision in this case, in a great measure, will turn upon that as applied to the various divisions as to which we have given evidence.

THE EIGHTH DIVISION—FOURTH WARD.

I will now proceed to call your Honor's attention to the evidence in regard to the various divisions mentioned in the specifications. I do not propose to read this testimony, but simply to state and refer to various portions to show how the election was conducted in the Eighth Division of the Fourth Ward. The testimony is that of a number of citizens, who show various fraudulent votes. The specification alleges that quite a number of persons were permitted to vote in the name of those who were on the assessment list, who had moved away or who did not vote, and there are forty-four instances of this character. We have proven that in this division these frauds were committed, how they were committed, how the officers invited these frauds by their conduct, and we have proven forty-four instances of what we call personations. Their names and numbers will be furnished to the Court.

No.							Page.
652	John Godfrey,	6
623	Robert Godfrey,	6
644	Robert Godfrey,	6
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338	Francis Coogan,	9
617	James Lamb,	11
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542	Peter Warner,	12
399	Edward Elliott,	12
384	Mat. Shepherd,	13
493	William O'Neil,	13
528	Henry Paul,	.	.	.	.	.	23
641	James Hauson,	.	.	.	.	.	23
575	Richard Henry,	.	.	.	.	.	23
497	Edward Cope,	.	.	.	.	.	23
496	Daniel Jones,	.	.	.	.	.	23
454	Thomas McCauley	23
450	Patrick Hagan,	23
236	Dennis McLoughlin,	23
211	Wm. McNichol,	23
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501	John Leonard,	32
62	George Morris,	41
269	Frank Morris,	42
118	John Tracy,	44
119	George Pepper,	.	.	.	.	.	44
120	James Delaney,	.	.	.	.	.	44
163	Michael Feeney,	.	.	.	.	.	45
192	James Dunn,	.	.	.	.	.	46
334	Benjamin Young,	.	.	.	.	.	47
336	George Savage,	.	.	.	.	.	48
463	John McConnell	.	.	.	.	.	49
343	James Conner,	.	.	.	.	.	50
248	John Valient,	.	.	.	.	.	50
79	Conrad Brown,	.	.	.	.	.	69
604	Barney Shields,	.	.	.	.	.	70
598	James McGrath,	.	.	.	.	.	70
179	John McBride,	.	.	.	.	.	74

The first one is 652, on the list of voters, John Godfrey, and Robert Godfrey, No. 623. We produced Robert, who lived back of 851 Shippen street, and who was assessed but did not vote, and yet the name was voted and put upon the list of voters. We proved the same thing in regard to others. There is one vote in particular that I desire to call your attention to—Lewis Slymorouck, a witness examined through an interpreter. "Q. How long have you been in this Country? A. Three years and a half. Q. Where do you

live? A. Atkinson place, Baker street, No. 4. Q. Did you vote at the last election in the Eighth Division Fourth Ward? A. Yes, sir. Q. Did you show your naturalization papers, or any papers at all? A. No, sir. Q. What is your business? A. Shoemaker. Q. You had not any naturalization papers? A. No, sir. Q. Showed no tax receipt? A. No, sir. Q. Did you give your name when you voted? A. Yes, sir. Q. Did anybody object to it at all? A. My son-in-law cautioned those inside not to receive my vote, as I was not a citizen; they told him it made no difference."

On the list of taxables is the name of Louis Slawfraully, cordwainer, back of 725 Baker street. On the list of voters no such name appears. I merely desire to call your attention to that in connection with a very large number of persons who voted upon the names of citizens who were on the list. It furnishes the key to how this is done. They catch a man in the street; give him a name; the name is not taken of the voter, but a name already on the list of taxables goes down. This man's name is not down because they find some other name down when they produced him as a voter. It would require a great deal of time to enumerate all the flagrant instances in which this was done, and no effort has been made to contradict it. Let me call your Honor's attention to the conduct of the officers in connection with this. Thos. Nicholson, one of the witnesses testified—"I was Inspector of the election in the Eighth Division of the Fourth Ward; the polls opened a few minutes after the appointed time; the Alderman of the Ward made his appearance in the room, and stated that he had sworn their officers (Democrats) the night before, and requested Mr. McKeown to swear the other fellows; the book furnished by the City Commissioners was placed in my hands; some short time afterwards, the Alderman made his appearance in the room, and asked 'What that fellow was doing with that book,' telling the Judge to take it away from him; Philip Madden was the Judge; in order to prevent violence, I had, of course, to succumb; I gave the book over to Madden; he took the book and sat on it; the election went on all day without its use."

Your Honors will perceive that the act of Assembly requires the oath to be taken by the election officers, and the fact shall be certified by the party who administers it, but it was not done in this case. The book referred to by Mr. Nicholson was produced in Court, and it was evident that it had been sat on, for there was not a scratch on it, and it was clear that it had not been used during the election. The next testimony in regard to it is James C. Adams'. He says that McKeown took the

tickets and the other Inspector "sat and looked on." "Q. Was there any guide for these officers? Did they use as a guide the book furnished by the City Commissioners to the election officers? A. Not so far as I saw. Q. No respect paid to any poll-list or any book of the kind? A. No, sir. Q. No examinations made? A. No, sir. Q. When the voters came up to vote, was there any effort made to find out whether their names were on the official list? A. Not so far as I saw. Q. Did either of the Inspectors or the Judge have an official list and examine it in order to ascertain whether the names of those who offered to vote were upon it? A. The Judge had the official list furnished by the City Commissioners, which I carried to the poll myself. It appears the election papers were left at my house on Saturday the morning previous to the election." The witness also describes the manner in which the book was taken away and kept by the Judge, and when the book was produced here, there was not a single tick upon it and not a single scratch, showing that no use was made of the book that day.

Now, in regard to the oath. I desire to call your attention to the testimony in regard to that—about these men being sworn. By the 30th section of the General Election Law, the oath of the officers is required to be taken and subscribed.

"It shall be the duty of the said clerks forthwith to make out two copies of the forms of each of the said oaths or affidavits, which shall be severally subscribed by each of the inspectors, judges and clerks, and the said oaths or affidavits shall be certified under the hands of the persons by whom they shall be administered."

"They shall be sworn, and the oath shall be certified by those who administer it," and the City Commissioners furnish a printed copy of that oath to facilitate the officers in obeying the requirements of the law. Now, here are the forms of oaths which were brought there that morning, and the Alderman says, "I swore our fellows the night before!" Who swore the rest of the fellows? The Alderman says, "The Judge can swear you." Who swore the Judge? Here are the oaths returned, and you will perceive upon one the Judge is Philip Madden, "*his mark*,"—no certificate of the man who swore him,—and you search in vain for evidence that any of these officers were sworn at all. Here are the Inspectors' signatures. Who swore them? "Our fellows were sworn the night before!" But who swore them? There is not what the Act of Assembly requires in any of these cases.

Judge Allison—Was the Alderman examined as a witness in this case?

Mr. Mann—No, sir; the respondents called no witnesses at all.

We have the evidence of William McIlvain, an officer in the same division, to the same effect—that Nicholson had the book for three or four minutes, and that the Alderman ordered the Judge to take it away from him; that he did take it away, and when persons came along to vote, there was no examination of any books or papers.

And to the question, “How many voters were examined on oath or affirmation as to their qualifications?” he answers, *only one the entire day!* William D. Moore’s testimony is here in regard to the conduct of the election officers and the crowd outside acting in concert with them. He says, that at three o’clock he took a blank book and commenced to keep a list of voters as they were polled; “shortly after three o’clock a large number of men came up to vote, and as the names were given in—John Smith, Peter Jones—the man inside sung out ‘all right,’ and there were no questions asked.” A few minutes before six o’clock the book was taken from Mr. Moore. He says, “About five o’clock, a gentleman who was on the other side, and who had been very prominent, turned around and said to three or four gentlemen, ‘Why don’t you go and bring such a man?’ And the four men started off, and they brought back one man by that name, and he voted. About three minutes afterwards another man came up of the same name, *and he voted*; some said, ‘Why don’t you get such a man?’ naming the voter; when a man was named, they would send some of them after him.”

Your Honors will find at the end of the list that they brought two Godfreys. It is evident that, finding that name vacant, they started a party after him, and two men were brought to vote, neither of them being the right man.

Mr. Fortescue’s testimony goes to the same point, and shows clearly how the parties were led to vote at this poll thus constituted.

“I saw a number of persons vote; while I was there I saw some six or seven persons vote, whom I have always known as reputed thieves. That is the only way I know these people to designate them. These men came from the corner of Eighth and Shippen, and apparently came up Shippen street. They were met at the election poll by Alderman McMullen. When the first man of the party, whom I knew as John W. Thackara, got to the poll, a ticket was handed him, I think, by Alderman McMullen; at any rate Alderman McMullen walked with him to the window. I could see the head of the voter put to the

window, and his hand thrust inside ; and immediately after he left, probably not two seconds elapsed between the time he put his head to the window and his leaving it, they were all of them at the window ; McMullen and Thackara, they put their heads to the window. There was about seven of them altogether. A man who I knew as Charles Strafford was one of the party. They went up in succession immediately after Thackara, and voted ; that is, I could see them all go to the window, and see them stand at the window for a second or so and immediately go back again. The whole thing did not occupy more than three minutes. There could not have been any questions asked of the voters in that time."

Upon examining the list you will find no such names as Thackara and Strafford, and so these men had names given them, selected from those on the list of taxables. Mr. Fortesque describes the communication existing between these parties, and who the ruling spirit was. There is no evidence to show who Thackara and Strafford are, but they were persons known by these election officers, and I have no doubt but that Mr. McKeown knew "Whitey" Thackara as well as he knew his own brother. The parties are well known to this Court, if the Court knows anything outside of the parties who figure on the pages of this book of testimony. Peter Dick and James C. Pointer testify to the conduct of those about that poll, and it will be seen that the officers began this election by a wanton disregard of the law by refusing to take and keep the list furnished them, and without which there can be no fair election. They began the election by dispensing with that which Judge King says is "indispensable." I read from the opinion of Judge King in Kneass' case.

"But another class of applicants to vote may present themselves, viz : persons who are not to be found on the official or alphabetical list. * * The language of this law is so clear and the policy of it so obvious that it admits of no construction qualifying its letter as respects persons not found on the official list. It is from votes offered by this class of persons that the great danger of election frauds arises. If election officers should receive votes from such persons without the inquiry as to residence required by the Act, the consequences may be easily divined. Whoever could procure the greatest number of reckless men, ready to offer votes in districts where they are not entitled to vote, would be certain to triumph. * * A rigid and faithful execution on this part of the election law is absolutely indispensable to a fair election."

He says that if any other doctrine is held, he who can procure the greatest number of persons to do this thing will succeed, and that was done here, for swarms of men went from poll to poll and voted, and carried out that very thing which Judge King said would strike at the very foundation of our liberties. He says it is *indispensable* to a fair election. It will, no doubt, be urged on the other side that there ought to be men to challenge. But these election officers themselves are the guardians of the purity of the ballot-box. The law places these men as the sentinels on duty, to watch and guard these polls. The citizen may be afraid to do his duty in this respect, and the law therefore puts these men inside to perform the duty, and if they fail, or have not sense enough to perform that duty, they are not fit for the position, and the Court should set aside the return which embodies their fraudulent work.

Now, what is the result in this Eighth Division, Fourth Ward? They polled altogether 653 votes. I offered some evidence to show that there had been no houses built of any account in that ward for the last seven or eight years. I brought some testimony in regard to that, and I sought to show that they had been going on year after year in this way, emboldened by the success attending their efforts, to increase their vote by the hundreds. The evidence was not considered proper, by the Court, and it was ruled out. But in this Eighth Division the result may well be imagined, when the officers opened the poll, and carried on during the day in the manner described by the witnesses. We have a list of those on the list of voters who do not appear on the list furnished by the City Commissioners to the election officers, and who were permitted to vote without making the proofs required by law. They amount to 238 names. The proof is that not more than once during the day, when persons came to vote the adverse ticket, they went through the requirements of the law, but in 237 cases they received these votes without taking these proofs. The Court will perceive that we have confined our proof to just this condition of things. We have not gone over the old track with canvassers to find if these people lived there, for that is unnecessary, and is, after all, nothing but hearsay testimony, and we do not think it is the duty of citizens to increase the trouble of such an investigation. For this is a petition of citizens and not of candidates. It is not the duty of citizens to hold the election over again and incur the expense of the canvassers. The men who gave false names to the assessors can give false names to the canvassers, and we have had bitter experience in this direction. We

did it in 1856. It was the first time, and it was then done under the pretence that we were making a new Directory on the plan of the London Directory, taking the names of all persons over 21 years, and the canvassers took limited districts, and after obtaining the names they were arranged alphabetically. What was the result? The other side sent men around, and they found some of the men, and while the Court said we did the best we could; they said, afterwards, they placed very little reliance upon it, and did not rule the case upon it. The Court said they regarded the canvass as too unreliable to form the basis for a decision. It will be said that we did not go around to see if these 238 persons did not live there. That is true. We are not bound to. It was the duty of the election officers at that time—the day of election—to ascertain where these people lived, and the failure to do so then was the violation of the law which must set aside the election. They allowed these 238 persons to vote without giving anything but a name, and to find these people now would not prove they were qualified voters. There were 44 persons who were smart enough to vote names on the list, while the others were reckless, and did not care anything about the risks and penalties attached to the offence they committed. Surely a poll conducted in this way cannot be regarded as a poll that ought to be allowed to stand. I mention this particularly, because it seems to be the opinion of some persons that, notwithstanding all this, we must go on and pick out each voter and show this to be illegal and that to be illegal. We say that the party who claims any validity for these votes must show it, not we. Our duty is to reject it all; if you want any of it to stand, you must bring the men and show that they did live, and that they were legal voters. It would be equivalent to holding an election over again; but if the election is not held over again, the Court has nothing to do with it. I do not say the other side is bound to do it, but they might show such a state of affairs as would relieve the case of its present aspect; they might bring that which would be a little salt to save their case. They do not do anything of the kind, and it stands a large mass of fraud. I do not suppose there can be any well-grounded belief in the minds of the counsel that they can sustain this poll in the face of the law as it now stands on the statute books.

THE SEVENTH DIVISION, FOURTH WARD.

I now pass to the Seventh Division of the Fourth Ward. We offered in evidence, first, the Assessor's book—"the official list"—as Judge King called it, the alphabetical list. There were polled in this division 360 votes. On the list of taxables there are 249 names, and 111 are not. Of the 249 on this list, 166 are marked with the letter "V." There are 16 names written in lead pencil upon this book, kept by the election officers, or the book that ought to have been kept by them. There should have been 111 names added, with the names of those who vouched for each of them. All it shows is the 111 votes, without stating anything but the name. We produced testimony before the Examiner of a like character as that in the Eighth Division, to show that the officers allowed people to vote in other names—to give the names of persons they knew were not residents. The first name is 359, on the list of taxables, Martin Powers, living at 607 Bedford street. Hugh Riley, who lived at 607 Bedford street, since October, 1866, swears that Martin Powers did not live there. The next is John Gallagher, on the list of taxables, 713 Shippen street, while the testimony of Alfred Moynes is that Gallagher has a carpenter shop at that place, but lives in St. Mary street, below Eighth—out of the Seventh Division. But he voted, and the "V" is opposite his name. It is one of the instances in which they marked with the "V," and it is the only John Gallagher in the Ward. The next is James Welsh, on the list of taxables, 618 South Seventh street. His mother testifies that he is not of age—is not 18—that her husband, of the same name as the voter, died 11 years ago. Roger Cochran, 519 Bedford street. Your Honors heard the testimony of Martin O'Harra in regard to that, and it is not necessary to refer to it here. He is the man who said he was a poor man, and wanted money to get his breakfast when he came to testify. I pass on to the others; and will content myself with giving your Honors the list of names, with the page at which the witness may be found.

PERSONATIONS.

No.					Page.
359	Martin Powers,	:	.	.	89
327	John Gallagher,	:	.	.	90
330	James Welsch,	:	.	.	92
326	Roger Cocoran,	:	.	.	93
255	John Simpson,	:	.	.	96
288	Bryan Cunningham,	:	.	.	96
201	John Gillen,	:	.	.	99
353	John Dougherty,	:	.	.	100
119	George Worn,	:	.	.	101
257	John Burk,	:	.	.	102
265	Charles Hunter,	:	.	.	102
303	James Duncan,	:	.	.	103
22	William Davis,	:	.	.	103
342	Hugh Cain,	:	.	.	114
72	John McLoughlin,	:	.	.	121
65	Patrick O'Neill,	:	.	.	121
333	James Riggs,	:	.	.	125
317	Patrick Riggs,	:	.	.	126

Now, having shown that the letter "V" was not marked in a large number of cases, as the figures will indicate—that the book was not kept as required by law—that the names were not added to it with the names of the vouchers—that these frauds were perpetrated—I propose to call your attention to the manner in which the officers conducted the election. Dr. McArthur, an Inspector in this division, testified that outsiders came into the room—that Mr. Moran, the other Inspector, took the tickets. "Q. When the people came up to vote, what did you do? A. Well, I looked at the book and tried to find the names. Some names I could make out and some I could not. Q. When you could not find the names, what did they do? A. Well, the votes were generally taken. Q. They got the votes faster than you got the names? A. Yes, sir." The witness also testified that the Judge was told that he was responsible for the book; that his clerk tried to catch up on the names, but could not, and at the close of the polls they were still behind; that about a dozen persons were sworn during the day; that the Judge was away an hour and witness took his place, and when witness left, some one took his place.

Here was the Inspector toiling on during the day to catch up, to make correct what was erroneous, it being his plain duty to

find the name, or not finding the name, to have the proof. Instead of that, the vote is taken and the Clerk is set to toiling afterward. George W. Martin, the Inspector's Clerk, was also examined to the same point. Moses McAfee, a police officer, was there all day and saw John Smith, a resident of the Third Ward, vote, and didn't see but one man sworn the whole day. Samuel Carmichael testified to the receipt of an illegal vote, the man having been convicted afterwards. The care that was exercised to keep out illegal votes is evidenced by the testimony of Michael Moran. He testified that he knew Patrick Moran, his nephew; that he (Patrick) was not a citizen; that he voted; that he has left the city because of the subpoena to attend here. Michael Moran was an election officer of this division, and was present when this vote was accepted, and he did not make any objection, although he knew it was an illegal vote. Is it reasonable to suppose that a man who received the vote of his own nephew, whom he knows to be an illegal voter, would hesitate to take votes of others? It is evident from the fact that 111 were received, and there are no vouchers. We are entitled to have the record with names of the vouchers; we were entitled to have somebody to come forward and stand up for these people.

Your Honors will find the following to be the list of 111 names who do not appear on the list of voters, but who were permitted to vote:

- 4 Michael Howard
- 6 Michael Conner
- 7 Sol Pinhero
- 9 Michael Gartland
- 10 James Casey
- 17 A. Bulger
- 21 John J. Hyman
- 22 William Davis
- 30 Frederick Keyser
- 31 James McCluskey
- 40 Abraham Von Zavorsky
- 53 James Hughes
- 56 Hyman Roenswipe
- 58 John Curtin
- 59 Aaron Levy
- 61 Harmon Hulverty
- 62 William Crossman
- 63 George S. Greathead
- 92 Patrick Saxton
- 97 George Turnbull

- 98 James Casey, voted No. 10
99 Arthur Fagen
100 Abraham Tillman
102 Timothy Mealey
103 James Tool
105 Daniel Callahan
107 Andrew Pierst
108 Lewis Lutt
110 F. T. C. G. Crees
54 Nicholas Milne
57 John Gobell
58 John Miller
61 George Elcon
63 Patrick Haceley
67 William F. Bittle, voted No. 156
80 John Dennison
90 James O'Kane
95 Thomas J. Dagney
104 Anthony Lubb
105 Michael McAnany
120 John Welsh
122 Frank Monaghan-
123 James J. Monnaghan
126 Cornelius Monnaghan
154 Charles McGettigan, voted No. 301
185 James Hagan
198 Nathan Caldwell
199 Charles Solis
202 Henry M. Loan
204 William Kalon
210 John Certney
221 Charles March
224 B. Crausen
233 James Dougherty, voted No. 103
239 John Burns
244 Samuel Montgomery
245 Anthony Vanes
246 William E. Clayton
251 Matthew Haver
254 John Sheridan
261 Martin Delahide, voted No. 48
262 George Hillburn
269 John Vance
270 William McDougall

- 273 William White
277 John Simnes
282 Charles O'Conner
285 Frank Burke
289 Peter Malloy
297 James Megary
116 Francis Dowd
117 Daniel Crimmons
120 Bernard McGuire
122 John Nathan
123 Alexander Kirby
125 Michael Porter
128 Thomas Sweeney
132 William J. Burns
139 P. W. Wilkinson
140 Matthew Conner
144 Bernard Gibney
145 Peter W. Whitson
147 Walter F. Evans
150 Stephen Dennivan
154 C. Alexander
163 John McManus
166 Cornelius Honahan
167 Edward Taylor
171 Patrick Kain
172 Solomon Jacobs
175 James Burns, voted No. 169
177 John Hurshead
178 Stephen Donnovan
181 James Carmichael
183 Thomas Higgins
184 Isaac Flannagan
191 Frederick Springler
192 Richard Shields
196 Henry Heller
202 Thomas Brown
203 Edward Berry
205 William Cassiday
209 John Mahan
211 William H. Buckingham
218 Samuel McArthur
220 Manning Knoor
222 Peter Spook
223 Henry Bredmyer

- 228 Henry Walton
235 George Sack
241 John Conner
242 William Cunningham, voted No. 206
246 James McCann
247 James McWilliams
248 John Hammond
253 John White
254 Anthony Ugt
262 John Dugan
263 Henry Bowen
265 Charles Hunter, voted No. 244
267 George Williams
270 James Glansey
273 Joseph Carter
276 James Keenan
279 Emanuel Roberts, voted No. 46.
281 Joseph Charlton
282 Daniel Engle
284 Peter Morgan
289 James Burr
291 James Harkey
298 Edward Barron
299 John McCarty
302 James Dunn
304 Michael Donahue
305 Henry Beasman
306 Jacob Wolf
312 Bernard McKenna
314 Stephen Ross
317 Patrick Riggs
321 Charles Hershfeld
323 Daniel McNichol
324 Edward Burchell
334 Patrick McGinley
336 Daniel Engle
338 Thomas McGahan
341 Peter Shirk
343 Timothy Thomas
349 Patrick Ridge
351 Daniel Cunningham
356 John McGahan
357 John Masterson
360 Hugh Kane, voted No. 342

THE SIXTH DIVISION OF THE FOURTH WARD.

I now propose to take up the Sixth Division of the Fourth Ward.

Judge Brewster. Did you prove your vote in any of these Divisions?

Mr. Sellers. No, sir; not in one.

Mr. Mann. No. It would have involved a prolongation of this case.

In the Sixth Division—I have here a paper or loose sheets, purporting to be a list of voters. It is not a circle which has no beginning or end. It has an end, but it is difficult to find where the beginning is! The law requires these officers to preserve the list, and this is the condition in which these officers left this paper.

At the Prothonotary's office we found these sheets as the list of voters for that division. We cannot tell where it begins and ends—who voted first or who voted last. You will perceive in examining this testimony, referring to the paper, the difficulty we had about it.

William J. Manning testified:

"I was a clerk of the election in the Sixth Division, Fourth Ward; Clerk to the Inspector, Mr. Marcus; think, to best of my knowledge, I voted in the first hour—either the first or second hour; voted the Democratic ticket."

This is a question we asked of every officer, and all answered that they voted the Democratic ticket; although one of them avowed himself a Republican when we applied to this Court for vouchers.

"Q. Did you keep a list of voters? A. Yes, sir; kept a tally-list; a list of voters. Q. You wrote down the names of voters? A. Yes, sir. Q. Were you absent once or twice, at different times? A. At one time, me and my Clerk. Q. Who kept your list when you went away? A. The other Clerk. Q. Were you sworn? A. Yes, sir. Q. Did you read the oath, or was it read to you? A. I read it. Q. Do you know what the oath was? A. No, I can't say that I recollect it now. Q. I think the oath was, that you should write down the names of the voters, and I wanted to call your attention to it. You know, however, that it was a part of your oath and your duty to write down the names of the voters as they voted, and particularly the way in which they voted. You know that was a part of your duty, don't you? A. Yes, sir. Q. Which duty, you say you performed except at intervals? A. Yes, sir. Q. Now,

can you tell me how many names you did write down? A. No, sir, I can't; there was not very many that I omitted. Q. Can you tell me how many you didn't write down? A. Not the exact number. Q. Well, about how many? A. Probably some 14 or 16; I am not positive as to the number. Q. Might there have been more than 20? A. There might have been more and there might have been less. Q. Might there have been 30? A. Well, I don't think there were 30. Q. Is it possible that there could have been 50? A. I don't know whether there could have been 50, not knowing the exact number."

I made this witness take this list, and examined it, and there were 44 names on the first page that he did not write; he could not tell when these voters voted. You will perceive that it is impossible to ascertain where the beginning of that list is, and after an examination of the whole list, he finds 82 names that he did not write.

Instead of the Clerk being there taking down the names he goes away, and when he comes back he takes the names kept by the other Clerk, a practice not allowed by the Act of Assembly. The Clerks are intended to be a check upon each other. Instead of that, these men endeavored to tally, and they copied from each other. This is a dangerous practice. Then we come to the Prothonotary's office, and we can't tell from that list who voted the first hour, or anything about it. If the Act of Assembly means that the list is to be kept, and paper is furnished for that purpose, it should contain some information. No list kept like this one is a protection to frauds, for it is impossible to get at the frauds from such a record; for there is nothing to show how a man voted or when he voted.

Judge Pierce. I think it would have a healthy effect to prosecute these men for official misconduct.

Mr. Mann. Two men were arrested, tried, convicted and sent below for official misconduct, and yet they were re-elected by the same people of the same division.

One of the counsel for the other side suggested that the Governor had pardoned a number of election officers.

Mr. Mann. That furnishes another reason why prosecutions will not answer. The only remedy I contend for is to throw out the poll, and let these officers and the people who elect them see that they cannot elect their ticket by these gross frauds.

In order to get at the truth of this, I called Edward Wood, who was Mr. Meire's Clerk. He voted about an hour after the polls opened. "Q. Do you know who voted before you or after

you? A. I couldn't say exactly; I don't know who voted before me or after me either. Voted the Democratic ticket."

I called Mr. Wood to show how he voted, and that there was no such representation of the opposite side, as is contemplated by the Act of Assembly.

In this division, I proceed to call the attention of the Court to the fraudulent votes, in consequence of the facilities furnished by the election officers:

PERSONATIONS.

No.						Page.
86	John Lloyd,	:	:	:	:	127
74	William Pollock,	:	:	:	:	127
157	Edward Daley,	:	:	:	:	128
92	Andrew Williams,	:	:	:	:	129
125	Valentine Voltz,	:	:	:	:	129
11	Hugh Hays,	:	:	:	:	141
19	Lawrence Haden,	:	:	:	:	142
238	John H. Pennel,	:	:	:	:	144
102	William Carr,	:	:	:	:	153
103	James Dougherty,	:	:	:	:	154
261	Martin Delahide,	:	:	:	:	168
82	James McBride,	:	:	:	:	170

These frauds was contemplated, the names being put on the list for people who are residents of the Ward.

I desire now to read the testimony of Jacob L. Baugh as to the conduct of these officers: "Q. Were you at the polls of the Sixth Division of the Fourth Ward last election day? A. Yes, sir, I was. Q. Did you stand at the window? A. Part of the time, I did; I was about the polls all day. Q. Did you challenge the right of persons to vote that presented themselves there during the day? A. Yes, sir, I did. Q. What took place when you challenged them? A. When I challenged them, they would ask me, what in the hell I meant to do. I told them I meant to see things go right, as far as I knewed how. Q. When you say 'them,' do you mean the election officers? A. No, sir; the men on the outside, of the opposite party. Q. What did the officers inside do when you challenged? A. Generally, they told me I was too late. Q. What did they mean by too late? A. They said the vote was in; they would not give me time to look at my book; I would open the book, but would shut it up; I hadn't time to challenge them. Q. When you challenged, did they swear a man or swear a voucher,

to prove his residence? A. Well, I challenged, myself, about twenty-five or thirty, I suppose. There was not more than two, at the furthest, sworn of them."

Charles Sigman, a police officer, testifies to the same. He challenged seventy persons, but, except in a few instances, there was no voucher required.

The following are the names of persons on the list of voters who do not appear on the list furnished by the City Commissioners to the Election Officers, and who were permitted to vote without making the proofs required by law:

- 4 John Buck
- 6 Gotleib Pfould
- 9 Robert Donnell
- 15 Michael Shallow
- 23 John Salem
- 24 Michael Maguire
- 38 Andrew Mears
- 39 George Dillon
- 41 John Glancy
- 42 W. Yeager
- 43 James J. Ashmond
- 45 Patrick McDermott, voted No. 3
- 51 John O. Garrey
- 54 Nicholas Milne
- 57 John Gobell
- 58 John Miller
- 61 George Elcon
- 63 Pat. Haceley
- 67 William F. Bittle, voted No. 156
- 80 John Dennison
- 90 James O'Kane
- 95 Thomas J. Dagney
- 104 Anthony Lubb
- 105 Michael McAnany
- 120 John Welsh
- 122 Frank Monaghan
- 123 James J. Monnaghan
- 126 Cornelius Monnaghan
- 154 Charles McGgettigan, voted No. 301
- 185 James Hagan
- 198 Nathan Caldwell
- 199 Charles Solis
- 202 Henry M. Loan

- 204 William Kalon
- 210 John Certney
- 221 Charles March
- 224 B. Crausen
- 233 James Dougherty, voted No. 103
- 239 John Burns
- 244 Samuel Montgomery
- 245 Anthony Vanes
- 246 William E. Clayton
- 251 Matthew Haver
- 254 John Sheridan
- 261 Martin Delahide, voted No. 48
- 262 George Hillburn
- 269 John Vance
- 270 William McDougall
- 273 William White
- 277 John Simnes
- 282 Charles O'Conner
- 285 Frank Burke
- 289 Peter Malloy
- 297 James Megary

Voters were duplicated, and a number of citizens on the list of taxables were personated by fraudulent voters. You will find on that list, some figures indicating 306 votes. We have counted these names and there are 306. The election officers in making their return have returned 311 votes, making five more votes for the candidates than there are votes on that list, supposing that to be correct. Of the 25 votes challenged by Mr. Baugh, only two were sworn; while of the 70 challenged by Mr. Sigman, in no instance was any man sworn as a voucher. Upon that list of voters there are 306 names; upon the list of taxables the officers have placed the tick in front of 195 names, and they have added 11 names to the list in lead pencil, but in no instance have they added the name of the party, a qualified voter, who vouched for these people. We called gentlemen who voted, but whose names are not on the list of voters.

Now we complain that that list of voters is not kept in such a way that you can make anything out of it; that the election officers were all of one party, and they violated the Act of Assembly in pretending that one of their number was a Republican, but who really voted with the Democrats; that they have disregarded the law, which requires them to take the proof of residence; that they disregarded the law by not adding the names

of the vouchers, and the party who made proof, so that we can ascertain who committed perjury. We must go to the record for that proof, and Judge Ludlow's argument has great force when he says that we must go there to ascertain who these people are.

THE SEVENTH DIVISION, THIRD WARD.

I now go to the Seventh Division of the Third Ward. That is a division which, being the Seventh of the Third Ward, bounds upon the Eighth of the Fourth Ward. It is merely the line of the street that separates these, and it is so handy for the voter to go from the Eighth of the Fourth to the Seventh of the Third, that a vast number of these people made use of it on election day, and vote in both places. I merely give the names and numbers of these illegal voters.

PERSONATIONS.

No							Page.
515	William Benner,	.	.	.	.	.	140
37	John Smith,	.	.	.	.	.	170
160	Frank Durand,	.	.	.	.	.	171
465	John Flynn,	.	.	.	.	.	172
591	James Convery,	.	.	.	.	.	173
411	Edward Hay,	.	.	.	.	.	175
269	Matthew Connedy,	.	.	.	.	.	175
551	Roland McGuigan,	.	.	.	.	.	176
563	Michael McElwell,	.	.	.	.	.	176
138	George Turpin,	.	.	.	.	.	178
490	John Simmons,	.	.	.	.	.	179
459	William Begley,	.	.	.	.	.	181
272	Thomas Benner,	.	.	.	.	.	182
279	Michael Moon,	.	.	.	.	.	183
443	Thomas Graham,	.	.	.	.	.	184
549	George Galloway,	.	.	.	.	.	184
549	John O'Neill,	.	.	.	.	.	185
523	James Dayton,	.	.	.	.	.	186
275	John Fair,	.	.	.	.	.	187
502	George Gogle,	.	.	.	.	.	189

No.					Page.
60	Joseph Openshaw,	.	.	.	192
527	Patrick McKenna,	.	.	.	192
526	John McKenna, Jr.,	.	.	.	193
416	Thomas Williams,	.	.	.	193
155	John McCusker,	.	.	.	196
466	Robert Hargraves,	.	.	.	199
170	John Smith,	.	.	.	200
600	Patrick O'Flagerty,	.	.	.	201
605	Patrick O'Flagerty,	.	.	.	201
196	Joseph Ralston,	.	.	.	201
473	Thomas Brown,	.	.	.	202
344	William Johnson,	.	.	.	203
552	William Johnson,	.	.	.	203
545	William Fagan,	.	.	.	204
100	John Boylan,	.	.	.	204
472	Martin Callahan,	.	.	.	207
266	Charles Albright,	.	.	.	215
270	Frederick Rickes,	.	.	.	216
469	James Jackson,	.	.	.	216
252	Michael Garden,	.	.	.	218
209	John O'Neill,	.	.	.	218

There are forty-one instances that we have shown that the officers were deceived in the person of the voter. One can imagine that an election officer may be deceived in one or two instances, but when it is repeated forty-one times it increases the inference that the fraud was knowingly perpetrated. There are one hundred and eleven persons voted in this division, whose names are on the printed list, who are not on this list. One hundred and eleven of the six hundred and five polled. There are ninety-three persons who voted whose names are on here, but who are not checked off. There are nineteen added of the one hundred and eleven.

I read the testimony of Albert H. Hamilton, to show the irregularities at this poll. "I was an Inspector. Q. Who was the other Inspector? A. His name was Robert Thompson. Q. Is that the Thompson who had the difficulty with and was charged with shooting Capie? A. I believe it was the same one. Q. Were you present when the polls opened and the election began? A. Yes, sir; I believe I was. I had all the papers; they were left at my house the night before the election, about eleven o'clock. Q. Who took the tickets during the day? A. Mr. Thompson took the tickets, I kept the book.

Q. Do you mean that you kept it, or that you undertook to keep it? A. I undertook to keep it; it was impossible for me to keep it right; they voted too fast for me; I had no chance to keep it; I hadn't the chance to look for the names as the men voted; as soon as a man came to vote, his vote was put in at the window, the Judge would say "it was all right," and the Inspector would take the vote and put it in the box, before I had half a chance to see whether the name was on the book or not. Q. You had no opportunity of seeing at all whether a man's name was on the book or not? A. No, sir; there was not much challenging done that day in our precinct; all the votes that were offered were taken; the Inspector would take them and put them in the box; they would not wait. Q. During the day, were there any persons sworn as vouchers—that is, to prove the residence of other persons within the division? A. I only remember of one case. Q. Were there at any time during the day, naturalization papers and tax receipts produced by the voters? A. No, sir; I didn't see any. Q. Do you know of any persons coming up to vote that you knew did not live in the precinct? A. Yes, sir, I do. Q. Did you make any effort to stop them? A. One man I did intend to stop, but his vote was put in the box as soon as he came there; before I could stop him from voting, his vote was put in the box; I knew that man; I knew that he didn't live in the precinct; knew where he did live. He gave the name of Thomas Smith. Q. Who swore the election officers? A. The Judge swore me, and swore my clerk, I believe; I believe he swore all on the Republican side. Q. Who swore the Judge? A. Indeed, I don't know; they were all there in the morning when I got there; didn't see any of the Democratic officers sworn; they all appeared to be sworn when I got there; I went to be sworn in by an Alderman, but I could not get sworn in; they had oaths when I got there; I suppose they were the oaths of the officers. Q. Hadn't you all the papers; the oaths, the blank forms? A. I had all the papers that came from the City Commissioners; I went to the Alderman to be sworn in, but the Alderman was too busy, and told me he could not do it, that the Judge had power to do it."

Now here are the papers, but are they certificates by the officers? It seems that the Alderman signed the blank, and then sent it to them to sign. There is his name when he was not at the polls. These officers are not sworn in the presence of the Alderman, so far as we know. All we know is, that Hamilton

went there with the papers, and was not sworn ; Alderman Mc-Clusky did not swear him, and there is no evidence that he swore the Judge. Hamilton was the man *inside*. It is curious to note what was done *outside*. Hamilton was engaged in toiling after the names of the persons who voted, and he succeeded in getting within ninety-four of the number. They got that far ahead of him. He never caught up, and when he tried to stop them it was useless, and he was kept toiling on, turning over the leaves of that book, and there was a total disregard of the duties required by the Act of Assembly, and without which there is no election. Your Honors will find that a large number of these voters are foreigners, but no oath was required, no naturalization papers. Now, on the outside we have Henry Davis. He testifies that he was at the polls when they opened, remained there until after one, came back about two, and remained until five o'clock. He had the window-book. "Q. When a man came up to vote and gave his name, what did you do ? A. I first tried to find his name, to see if it was on the book. Q. What did the election officers do whilst you were finding the name ? A. The ticket was put in the box, with few exceptions."

Mr. Davis did not say to these officers, "don't put that name in, until I ascertain whether he has a right to vote ;" that was his duty and right, but he went on examining his book, and the election officers went on taking the votes ; Mr. Davis was asked why he didn't stop the officers, and his explanation was that he didn't like to challenge men who might have the right to vote ; he did not wish to commit that sin. William Roberts, who was the Clerk, testifies that when a man came to vote, the Judge called out "all right ;" the Inspector called out "all right, he could now go, he was much obliged to him ;" during the day, about six persons were sworn. "Q. Did you know the two men that came up to vote, who were personated before ? A. I do not recollect their names ; the Inspector said 'persons have voted under your names before.' Q. Ralston was one, wasn't he ? A. Yes, sir ; I think he was." Ralston was challenged. These people were so anxious, and they took the votes with such rapidity, that it was impossible to get the names, and when the men came up, the Judge said "all right, much obliged," in voting this vast fraud. That is the way they got the one hundred and eleven votes in, and that is called an election. There is no contradiction of this ; and it is proven to have taken place in that division bounding on the Eighth Division of the Fourth

Ward. There is also the testimony, in connection with this, of Philip M. Shultz, who stood at the polls and saw Mat. Gibson vote as George Galloway, and he did not live in the division. Mr. Shultz was there during the last hour, had a book outside; they voted fast, and the rush came on so great, that he had not a chance to find the name. You will look at that last hour, and see what names there are on the list of people who came up to vote.

THE FOURTH DIVISION OF THE TWENTY-FIFTH WARD.

I pass on to the Fourth Division of the Twenty-fifth Ward. Here is the book offered in evidence that was taken from the box in open Court. You will perceive that it is the policy of the law that an inspection of that book will be evidence of the names of the people who voted. It is intended to furnish evidence of residence, and when the man's name and residence is not on this book, it is intended to furnish the name of the person who swore that he lived there. If this book was properly kept, we could, by an inspection of it, ascertain the frauds, and enable us to take measures to prevent these "Rounders"—the people who go around our polls to vote—and we could break up the practice. We could bring up the voucher who assisted these people to vote, and upon the evidence of the election officers that these were the men who voted and these were the men who swore to their residences and answered all the requirements of the law, the perjury could be ascertained, the parties could be convicted. But here we have no such check. We have nothing to show who these men were who go from poll to poll and vote, and it seems to me that Judge Ludlow took a very fair and proper view, that if these people were allowed to vote without the evidence required by the law, it would be sufficient to throw the poll out. Because a name is not here, is not conclusive evidence that there was no voucher taken; but when we go further, and prove that the fact is that no voucher was taken then, it is conclusive that there was a fraud, and thereby one hundred of these votes cast, the *prima facie* of the case is that all are false until the other side show the contrary. Here is this book, which is intended to be a record which the election officers are to make up, and which is the muniment of title for every man who gets an office. What does it show? It shows first that there are in this division one hundred and four people who voted whose names are not on the official list. It shows that thirty-five have been checked by the officers, and the circumstances under which

they refused to check the others I will read to you. It was done deliberately. The election officers resolved that they would *not* perform their duty. I will show how it was that they did not do it. They did not wish to take these proofs, and did not wish to conduct the election as the law requires, and they concluded to do this thing deliberately, as the evidence will show. Jacob Jacoby, an Inspector, testifies that he remained from the opening until the close ; the tickets were all taken by James Burke. "Q. Which of the officers, if any, kept the book so as to find the names of the voters before they voted ? A. *Nobody.* Q. Then you didn't have to find the names on the book ; they must have voted pretty fast sometimes ? A. Sometimes they came on with a big rush. Q. During the whole day, the book was not kept at all to see if the names of the people who voted were on it ? A. No, sir. Q. How was it that you didn't look at the names of the people voting and mark them ? A. Well, the Judge allowed it was my duty to look after it ; well, I had no time to mark the book—mark the names—and watch the tickets on the window ; so I told the Judge, 'taint my place to mark the names of the voters ; he allowed one of the Inspectors had to do it ; didn't say who ; so I objected because I wanted to watch the votes coming in ; and another thing, we had no time to check them off. Q. Did you finally agree as to when you would mark them ? A. *Well, at first, marked one or two ; the Judge allowed we had better let it go, and check them all off at once when the election was over.* Q. Then when these four hundred and odd people voted during the day, you could not tell whether their names were on the book or not ? A. No, sir. Q. During the entire day did you administer an oath to anybody ? A. To my knowledge, to two. Q. Any more than that ? A. I can't tell ; I don't know ; it might be more, but still I can't say ; I am not certain. Q. Were any challenges made by persons outside during the day ? A. There was some made. Q. About how many ? A. About four or five. Q. What was done when challenges were made ? A. Generally called them inside before the Judge ; the Judge put questions to them. Q. Generally were they inside before the Judge ? A. Yes, sir. Q. Did you see a naturalization paper produced during the day ? A. One. Q. Only once during the day ? A. That is all. Q. The great mass of the people that voted there were foreigners, were they not ? A. The majority of them."

That is the testimony. Your Honors will find that in one hour they voted one hundred and thirteen persons ; it was between twelve and one, and voted in a rush.

Mr. Sellers. That is the workingman's dinner hour,

Mr. Mann. Yes, it was also the hour for the people who came here after the war was over, and they could not give a whole day to their country, but gave an *hour*, and voted in a rush! Jacoby was cross-examined, and said he was elected by the majority. This was a mistake, for he was elected by the minority—the Republicans—and it will be noticed that the system adopted was to give the book to the minority Inspector. This was done in all these divisions. They compelled the minority Inspector to toil as best he could after the names. In regard to two instances in which persons were not sworn at this poll, Mr. Jacoby testifies that he remembers Davis and Morris voting on age. "Q. Were they sworn when they voted? A. Not to my knowledge. Q. What did the officers say when Davis voted? Did you offer to challenge him? A. Well, I told the inside fellows to hold on, but before I turned around they had the vote in, and Davis went off; sung out, 'He is all right, on age.'"

The next witness that was examined in regard to the election in this division is William H. Simpson, the Republican Inspector's Clerk. [Mr. Mann read the testimony, corroborating that of Mr. Jacoby.]

Here is Jocoby's testimony that the great proportion of the voters in this division are foreigners, and if you will read the names you will be satisfied that this is the fact. You will find that the names correspond with the nationalities. This is not much in itself, but we have it corroborated. This location is by the Richmond coal wharves, where there is a large colony of Irish, and yet there is no evidence that any man was called to prove residence, or were naturalization papers demanded. There are a hundred instances in which these papers should have been demanded, but there is no evidence that such was the fact. I call your attention to the testimony of Mr. Simpson in regard to the character of these people who voted. We endeavored to find some of these people, whether they existed at all, but the canvassers were driven away, and had to take to the lots and escape from the neighborhood.

M. Reed. "They thought they were after the whisky stills!"

Mr. Mann. Yes, these are the same people who are engaged in violating another law, and there is no possibility of reaching them. Mr. Simpson says he has made efforts to find the person whose names are upon that list. "Q. Were you prevented? A. The majority of them would not give us any satisfaction at all; tell us to go elsewhere if we wanted to get satisfaction;

shut the door and kept us out, and the distillers got after us." Here is a division in which it is impossible to get any information, but we find that they allowed 104 persons to vote without taking the proof of residence, and they allowed more than 200 foreigners to vote without requiring a paper, when it is the duty of the officers to make every man who is not born in the country to produce his naturalization papers, which are the only evidence of his right to vote. The witness says that the majority of these people are Irish, that very few were from Germany. There are 24 persons who voted at the one o'clock hour, when they polled 110 votes, whose names are not upon the list; they rushed straight along without any examination. If they had made an examination they would have been required to swear these 24, and made a record of it. Instead of this, they rushed it along and allowed every coal-heaver to vote without asking him a question.

Mr. Mann read from the House Journal of the Legislature of 1859, in the case of Matthews *vs.* McClain, the report of the Committee on Contested Election, and the resolution attached, wherein the Committee threw out the entire vote of the Eighth Division of the Fourth Ward for frauds similar to those proved in this case. The Committee say: "A simple correction of the return, therefore, would entitle the contestant to the seat, but your Committee are forced to the conclusion that the utter disregard of the law by the officers of the election in said division, and the palpable frauds openly practiced by them, must reject the entire vote returned from the said poll, and included in the general return of the said district."

MARCH 21, 1868.—ARGUMENT CONTINUED.

When the hour of three arrived yesterday, I had discussed the evidence in the Eighth, Seventh and Sixth Divisions of the Fourth Ward; the Seventh Division of the Third Ward, and the Fourth Division of the Twenty-fifth Ward. The striking out of these divisions, because the election was void, would give the certificate of election to two of the contestants, and would come very close, but would not entirely overcome the majority returned for Mr. Ballier. But there is testimony in regard to two divisions which might or might not affect this particular return. I refer to the Sixth Division of the Seventeenth Ward

and a Division in the Twenty-third Ward. There is testimony in regard to the Fifth Ward, which has been alluded to, but we had offered testimony sufficient for the principle we have advanced; and, therefore, the evidence may be considered in an unfinished state. A number of persons testify to votes of non-residents in the Fifth Ward, but we do not propose to discuss them.

THE SIXTH DIVISION OF THE SEVENTEENTH WARD.

The next I take up is the Sixth Division of the Seventeenth Ward, in which I frankly confess the testimony is of the weakest character of any we have presented. The list of taxables used by the officers is in evidence, and upon the first glance it would appear as if the officers had not made any ticks at all. It appears to be entirely barren of any official marks, but upon minute inspection, there are ticks. Instead of marking the letter "V" in front of the name they have put a cross, which you see with a great deal of difficulty. However, I presume they intended these marks as a compliance with the law. It is scarcely distinguishable. We have counted these crosses—the Counsel and Examiner—and the number of these marks is 200, which indicates that 200 of these persons had voted. There are 360 names on the list of voters and there are 200 voters marked, and there are 125 who voted who are not on the list. We have proof that in that division the election was conducted in a manner similar to the others. James Floyd was examined. He was an Inspector. He testified that he took the book presented by the City Commissioner. "Q. The first man that came up to vote was Thomas Marple; did you search for his name on the book? A. Yes, sir; I think I searched. Q. Did you find Marple's name and mark it? A. I don't recollect whether I marked it or not, or whether I found it or not; I can't recollect. Q. How did you begin this election? A. When they first began to vote, they didn't give me time to find one name before the vote was in the box, and another one was up."

You will see by a reference to the book that he did not mark Marple's name. The name is not ticked. That is the way they began the election. "Q. Do you recollect any person being sworn to prove the residence of people who were not on the assessment list? A. No; I don't recollect any. Did you write down on that list the name of any person during the day who

voted and whose name was not on it? Did you add to that list together with the name of the person who vouched for him? The law says that when a person comes up to vote whose name is not on the list, if he is permitted to vote the Inspector must add his name and the one who swears for him. Did you in any instance during the day perform that duty? A. I think I put that name there—Weeber, Cadwalader and Master. Q. Just look over the book and tell me if you did it in any other instance? A. I don't find any. Q. Have you looked over the book? A. Yes, sir. Q. And you say you don't find any other instance? A. Yes, sir. Q. You have looked carefully over that book for the space of five minutes? A. Yes, sir. I don't see any other name that I can recollect of putting down."

John Scott, a Return Inspector, was also called, and he testified: "When I first went to the polls there was nobody there; I guess it might have been a quarter to eight; the other party came in; they put Floyd out; they tried to put me out, but I made up my mind when I went in to get pretty hard usage; they came to the conclusion to let us stay in." Witness said that naturalization papers were demanded in five or six instances. That is the testimony in regard to that division. Now I desire to show you the manner in which these officers kept the papers—the accuracy of these people. I find the numbers running from 1, 88, 99, 101, 103, and so on. That is a sample of their accuracy. (Paper shown.)

Mr. Cassiday. Have you the duplicate of that?

Mr. Mann. No.

Mr. Cassiday. You selected the best, of course.

Mr. Mann. It is the one we found in the Prothonotary's office. I simply offer it as a sample of the accuracy and character of this list.

Mr. Cassiday. Your Honors know there is a duplicate of this.

Mr. Mann. I know there is a time for these gentlemen to discuss this question, as there was a time for them to offer testimony, if they had any, of another paper. I do not pretend that that paper would vacate the election, but it is a sample of the work done by the clerks. That is the kind of clerks they select. The kind of Judge they select was shown in Court. He could not read or write, and when I handed him the list he said: "Mr. Mann, you know I can't read;" and when I read over the names he did not recognize any of them. These are the worthy instruments to carry out the schemes of these people.

THE BRIDESBURG ARSENAL.

The names of 33 voters will be found in one of the pamphlets before your Honors. These are men who constitute the garrison at the Bridesburg Arsenal. I do not know that it is worth while for me to read all the evidence in regard to these votes, but I will read some of it.

Judge Allison. This is the Eighth Division of the Twenty-third Ward.

Mr. Mann. Yes, sir; I will go hurriedly over this evidence. Patrick Brogan is the first. "Q. What is your business? A. Blacksmith; soldier, at present. Q. You are enlisted in the service of the United States? A. Yes, sir. Q. When did you enlist? A. I listed in 1865, the last time, the 17th February. Q. Where did you enlist? A. Frankford Arsenal. Q. Where did you live before you enlisted? A. I lived in Philadelphia, Front and Race. Q. Since you enlisted you have been doing garrison duty, have you not? A. Yes, sir. Q. And you are now one of the garrison at the Arsenal? A. Yes, sir. Q. Did you vote at the last election? A. Yes, sir. Q. At the Eighth Division, Twenty-third Ward? A. Yes, sir. Q. The division in which the Arsenal is? A. Yes, sir. Q. From whom did you get your ticket? A. I believe I got my ticket from Samuel Getty."

You will observe that these men got their tickets from Getty, who was a Corporal there, and who seemed to have them in special charge, either through orders from his superior or somebody else. Thomas Green, another witness, was a soldier at the garrison, enlisted February, 1865; lived in the Eighth Division, Twenty-third Ward, where he enlisted; was Return Inspector; voted, and got a Democratic ticket; I looked for a Democratic ticket; that is what I wished to vote. Q. You did not look at it. A. No, sir. I had confidence in the man that gave it to me."

It is a great thing to have confidence, as the editor of the Boston Post said when he ate sausages. Michael Farrel, another enlisted soldier, enlisted in Philadelphia, and voted at Eighth Division of the Twenty-third Ward. He refused to answer for whom he voted, until Mr. Sellers cross-examined him thus: "I am on the other side, (this was done to mollify the witness;) you voted the Democratic ticket? A. I did. Q. The whole ticket? A. The whole ticket."

"Q. By Mr. Mann. I cannot understand why he would decline to answer what the names were on the ticket he voted.

Witness. I thought (but since this gentleman, Mr. Sellers, told me he was of the opposite party) it might be a point of law to catch me in, therefore I did not answer; I have nobody to post me; I did not know what I was wanted here for. Mr. Mann. It is all right. Nobody desires to take advantage of you. Q. If you knew for whom you voted, you should have said so. When you say you voted the Democratic ticket, you might just as well say the names. A. It was all right, then; I did not know whether you had the authority or right to ask me that. Q. I think I had. A. Of course; I took my friend's advice, here, (Mr. Sellers.) Q. You know now you voted for Mr. Ballier and Mr. Leech; you know the candidates; you are something of a politician? A. No, sir; I am not acquainted with any of them except Ballier. Q. Did you vote for Mr. Ballier, for the office of City Commissioner? A. I did, sir. Q. Did you vote for Mr. Leech, for the office of Register of Wills? A. I did. Q. Did you vote for Mr. Megary, for the office of Clerk of the Orphans' Court? A. I did. Q. You knew enough of the subject to know who you were voting for? A. Yes, sir; at that time. Q. You didn't go it blind? A. No, sir; I had a full hand, and we carried it this time, I think."

Patrick Ellison testified that he has been in the army for fourteen years; voted at the last election in the Eighth Division, Twenty-third Ward; got his ticket from the Lieutenant; he understood it was a Democratic ticket from the man who gave it; was on the assessment list.

The next witness is Robert Smith, and then comes Robert Armstrong. All these men are enlisted men in the service of the United States. We discovered that Robert Smith voted the Republican ticket, and this was illegal. Robert Armstrong enlisted for three years, and his home was Broad and Fitzwater. James Shields testifies for whom he voted, and when he enlisted he was living at Holmesburg. Morris Smith was an enlisted soldier; he voted, and Corporal Getty vouched for him. William H. Reimer said he voted and Getty vouched for him, and he lived in Bridesburg. Edward Shields enlisted somewhere "out at the Allegheny Mountains." He said he was an Irishman, and he voted; Getty gave him his ticket. James Clary is an enlisted soldier; he enlisted the first day he came into the country. "I never worked a day in this country, and therefore I call this my home." Before he could acquire any residence anywhere, he enlisted in the Arsenal for garrison duty. Corporal Getty gave him his ticket; John Doran voted there and was one of the garrison; Michael Brogan, an enlisted soldier,

whose term expires 5th November, 1868, got his ticket from Corporal Getty, and so we go on until I examine Corporal Getty himself: and he says he gave out the tickets for Ballier, Megary, and Leech, and no others "Q. You were one of the officers of the election, were you not? A. No, sir; not in that election; I was not one of the officers. Q. You were not one of the officers of the last election? A. No, sir; I was elected this year. Q. Return Inspector? A. Yes, sir. Q. Do you know Edward Keenan? A. Kenner, it is. Q. You know Edward Kenner? A. Yes, sir; I did know him. Q. He was a soldier, was he not? A. He was, but he has deserted since last election. Q. Did he vote last election day? A. Yes, sir; to the best of my knowledge, he did. Q. You were about, looking around, working hard? A. I was attending to that kind of business; to the best of my knowledge, he put in a vote at the last election. Q. Did you furnish him with a ticket? A. I can't say, positively, whether I furnished him with a ticket or somebody else did; but I rather think I furnished it to him. Q. Do you know Henry Smith? A. Yes, sir. Q. He was a soldier at the Arsenal, then, was he? A. Yes, sir; been discharged since. Q. Did you give him his ticket? A. Well, sir; I can't positively say that I did; I think that I did; I won't say for sure that I did, but I think I did. Q. Was William Keiffer a soldier then? A. Yes, sir; he was a soldier at the Arsenal at that time, and discharged since. Q. Did you see Keiffer vote? A. Yes, sir; seen him vote; gave him his ticket. Q. Where did you live at the time you enlisted—in Frankford? A. I lived in Frankford. Q. Parents live there? A. My mother does; my father is dead. Q. How old are you, Mr. Getty? A. If I live to see the 23d day of next November, I will be twenty-eight years old. Q. Was this a new thing for you, or have you for a long time taken an active part in politics? A. I never bothered much before, but I always hunted up a little. Q. This time you were unusually active? A. Yes, sir; I tried to drum up all I could this time. Q. Do you know Benjamin Leons? A. I know Benjamin Leon. Q. That is what it is? A. Yes, sir; he voted right before Richard Slabe and Louis Bingham. Q. Is he there yet, or was he discharged? A. He is discharged; lives around in the neighborhood there—people lives there; they have been discharged since. Q. Leon, I am speaking of now; was he discharged from the Arsenal? A. Yes, sir; he is discharged; he lives around there. Q. Did you see Leon vote? A. I can't say positive; I think that he did vote. Did you give him his ticket? A. I think I gave him his ticket also. Q. You had a good many tickets that

day, had you not ? A. Yes ; I had considerable of tickets. Q. Had you the tickets for the precinct ? Who gave you the tickets ? A. I got the tickets from John Valee. Q. Was he the Committee-man for your division ? A. He was on the Executive Committee ; he got the tickets and furnished them to me. Q. Were you careful that day about your tickets, not to let the enemy slip any into your pockets ? A. Extraordinarily, sir ; there wasn't a carefuller man in the country that day, in regards to that. Q. Are you right sure, when you gave a man a ticket, what it was you gave him ? A. Yes, sir. Q. (Holding witness a number of Democratic election tickets.) Look at those ; is that the kind of a County ticket you gave out ? A. Yes, sir ; that is the County ticket. Q. That you gave out ? A. Yes, sir. Q. Wasn't it that ? (holding witness a Republican election ticket. A. Not much. Q. You are confident, then, that the tickets you gave out had the same names on as that—(first one exhibited)—Joseph Megary, Leech, &c. ? A. Yes, sir, just the same as that. Q. You are confident of that ? Confident, sir.

"Cross-examined. Q. Are you a single or a married man ? A. I am a married man. Q. Where is your family ? A. At White Hall ; my wife is there ; I have no family. Q. Did you say that all these men that Mr. Mann has asked you about, lived in the neighborhood of the Arsenal ? A. Yes, sir ; they all live in the neighborhood now ; all that he has asked me about live in White Hall and Bridesburg, right around the Arsenal, within a few squares."

"By the Examiner. You don't mean to say that the deserter lives around there ? A. No, sir ; only those that were discharged."

"By Mr. Gerhart. How long have you been married ? A. About two and a-half years."

"Q. Has your wife lived there ever since ? Yes ; she lives at White Hall."

Mr. Cassiday. White Hall is within the division ?

Mr. Mann. I think it is ; but if Mr. Getty has a wife, and she comes there for his or her convenience, he acquires no residence. He is inside the Arsenal, and can't come out without a pass, and these soldiers are not residents of White Hall, and not residents of that Ward.

There are some propositions so very plain that we think it is unnecessary to make any argument in support of. If these men, doing garrison duty here, are residents within that division, then the Government of the United States can, at any time, send a thousand men to do garrison duty, and the men would secure

the entire control of the ward. Councilmen, and all local officers, would be creatures of these men. The streets would be paved, and every regulation of a municipal character would be under the control of the soldiers thus doing garrison duty. To state that proposition is to argue it. Yet it will be argued by the other side that because these men wear the uniform of the United States, they have the right to vote. Time makes wondrous changes. A few years ago it would have been contended otherwise. Now, residence, under the Constitution, is not where a man abides for a little while, awaiting the orders of a superior officer. These soldiers are liable to be ordered away at any moment. An order from Washington could send a man anywhere, to the plains, or anywhere that the requirements of the servive demand. Can a man be said to have a residence and have control of himself who is thus placed. Most surely not. These men were not residents in that ward. If they had a right to vote, they were bound to go to the place where they had acquired residence before they entered the military service of the United States. It has been decided that when a man enters the service of the United States he does not lose the residence he had at the time. He may go back to the place the next day and vote. It is so held in the case of the clerks at Washington in the service of the United States, who go back to their homes on election day and vote. When James Buchanan was President of the United States—enlisted for four years—he did not cease to be a resident of Pennsylvania, and he could have voted in Wheatland. And this is the case with the lowest as well as the highest in the service of the United States. The man who goes into the service as ordnance sergeant, as well as the private soldier, no more loses his residence than the President of the United States. If he is a legal voter he can go back to his home and vote, but the idea that these men can vote in flocks is contrary to our laws and the Constitution, which requires them to reside at least ten days within the election precinct. Judge Woodward, in *Chase vs. Miller*, ruled this point when he said, "I don't say that the State cannot constitute a garrison of the United States an election division, but it has not been done, and therefore these men at Easton had no right to vote." And these votes were thrown out. They had no right to vote at the garrison at Bridesburg in time of peace, for no residence was acquired, and the opinion delivered in *Chase vs. Miller* determines that point. They must have a "residence," and the definition of what that means is given, and the Judge uses the word "domicile," where a man has all his interest around him; the tree must be fixed; it cannot be a

moving tree, carried around with him, by the soldier on his march ; if this were so, an enlisted man could be sent anywhere to strike down an honest vote, as easily as he could obey the order," "Let every soldier hew him down a bough." The man must be fixed, and the intention must be to make that his residence, his abiding-place, where all his permanent interests in life surround him. What property had these men in Bridesburg ?

The very food they get does not belong to them ; the clothing on their backs belongs to the United States. And if they had any civil rights at all, they existed elsewhere than in Bridesburg. These men were not assessed. The Assessors had no right to enter, and could not get in the Arsenal. There is a wall around it and a line of sentinels to guard it. If the Assessor should present himself at the gate, a musket would be dropped before him, and he would be challenged and prevented from entering. It is territory belonging to the United States, carved out expressly for them. It is not taxed by the State, and the Assessor does not include the property in his assessment. But these men marched out to vote, although not residents, and while soldiers doing garrison duty. The superior officer says " Go, and he goeth." They cannot go outside without orders, and in all their movements they are subject to the will of others. Voters in this State are to be white freemen. Are these men freemen, and are they to be allowed to vote when they cannot go out and mingle with the people of the vicinity, ascertain their wants and opinions and feelings, except at the beck and call of a superior officer ? They obtained passes on this day to go out and vote, and this is all they do to show that they are citizens of that ward. If this is to be allowed, then any election in Pennsylvania or Philadelphia can be controlled by a body of soldiers ; say five thousand can be called from the plains or elsewhere, be stationed in the Navy Yard, and when they have accomplished the work assigned them, be ordered back to the plains. I merely alluded to this to prove how absurd it is to hold these men to be citizens, entitled to vote in this division. Do they pretend that the marines at the Navy Yard should be allowed to vote there ; and yet these twenty or thirty men, with Corporal Getty at the head, march out from the Frankford Arsenal, and by their votes alone almost carry this precinct. They deposit their votes, and they march back again. Judge Woodward, in his opinion, casts new light upon this subject, bringing to bear upon this question a mind of the highest order.

Judge Woodward says : " There must not only be a district to vote in, but there must be a *residence* therein for ten days

next preceding the election. This is a part of the condition of suffrage. Undoubtedly the primary signification of the word "residence," as used in the Constitution, is the same as domicile, a word which means the place where a man establishes his abode, makes the seat of his property and exercises his civil and political rights; but I am not satisfied that the Constitution meant to limit itself to this strict and technical definition of residence. Referring the subject of election districts to the Legislature, as we have seen that it did, I incline strongly to think that the Constitution meant also to leave the subject of residence in an election district to legislative discretion, and, therefore, that the Legislature are as free to declare what shall be residence in an election district for ten days next preceding the election, as they are to prescribe the boundaries of the district. When they have not exercised their power, nor attached to the word any other than its ordinary legal signification, it is to be received according to its primary meaning in the Constitution, as equivalent to domicile. But if they should make a military camp in Pennsylvania an election district, and declare that military sojourn and service therein for ten days should be equivalent to a constitutional residence for the purposes of election, I would be extremely loth to think such a law unconstitutional."

The Legislature has not done anything of the kind, and it comes back to this, that residence is domicile as described here.

THE RECAPITULATION.

Now I only desire to recapitulate what I have proven in this case, and then leave it, and hear from the other side. This decision affects some twenty-five or thirty votes to take from the side of the candidates who appear to have the majority. In regard to all these divisions, I have shown in all, with the exception of the last, that the election officers did not look at the official list, and find the name of the applicant to vote before they allowed him to vote. A great deal of stress has been laid upon the ruling, that the failure to make the letter "V" does not affect the election, but we must not confound the failure to make the letter "V" with the failure to look at the book to see if the name is there. The man who does not look at the book, and permits a voter to vote without examination, is guilty of quite another thing from looking and then neglecting to make the "V." And I say the election cannot be held valid, unless they

took the record for their guide, and when, as in this case, they did not take the book and look at it, their acts are invalid from the beginning. That is the first omission, the first dereliction of duty—that they opened the election and did not look at the book and see if the voter was on the list. *Second.* They did not, in half the instances—in some of the wards in all—find the name at all; they did not mark the letter “V” opposite the name—they did not require, as they were bound to require, proof from hundreds of aliens that they had been naturalized. In the Seventh Division of the Third Ward, and in the Fourth Division of the Twenty-fifth Ward, hundreds of aliens voted, and yet there was not one certificate of naturalization exhibited the entire day. They did not require proof of residence in almost all of these divisions, to the extent of a hundred and upwards. They required no proof of citizenship, as to the names of those who were not on the list. They required no proof of the payment of taxes by those whose names were not on the list.

They did not require the proof of a qualified voter, in such cases of the residence of the voter who was voting, although not on the list. They did not swear such persons that they resided in said election division within ten days, or that they removed therein in pursuance of their lawful calling, and not for the purpose of voting therein, an oath and proof that can be made by no one but the applicant who presents himself to vote. This is the law of the land. It is the duty of every citizen to know whether his name is on the list, and if it is not, to take the proof with him. If he does not take the proof he is an illegal voter, for the law says the votes shall not be cast until that proof is taken. They did not add the name of any such person to the list of taxables, except in a few instances, which show that they *knew* it was their duty to do it. They do it enough to show that. In the Eighth Division of the Fourth Ward they had *none*, and in other divisions a few. They did not in any single instance write down the name of the citizen who made proof. They combined and agreed in these divisions to act in this way, particularly in the Fourth Division of the Twenty-fifth Ward, where they agreed to lay the book aside and mark it at the close of the election.

Now, are these duties required to be performed? Must they be complied with in order to make this election valid? Are they merely formal and directory, or are they stern requirements of the law? And have these men wantonly and wickedly disregarded them? If so, then the election is not a fair election, and cannot be sustained by the Court. I contend that

these are stern requirements of the law, and I have quoted Judge King, who says that these are *indispensable* to a fair election. It is made a crime in the election officers not to perform them. It is not merely directory, for it is a crime for which they can be punished. On page 385 of Purdon, 95th section, the law is in these words :

"If any such Inspector or Judge shall receive the vote of any person whose name shall not be returned on the list furnished by the Commissioner or Assessor, without first requiring the evidence directed in this Act, the person so offending shall, on conviction, be fined in any sum not less than \$50, nor more than \$200."

And they have been convicted under this act. What are the provisions they must regard ? I have reiterated them, and they are the first directions of the election law which are given to the election officers. Can an election be valid without a compliance with them ? I have made a calculation of the number of violations of the law proven in this case, and the amount of the penalty to which the officers are liable is \$140,800. These men have violated the law, and rendered themselves liable to this extent. And this merely directory, merely formal ! Surely not. They are "indispensable." They must be done if you will have fair elections. This began in a single division ; but it is spreading. It is now in six. Next election, if this is permitted, you will have it in nine or ten ; for if the officers can do this, what is to be done to protect the purity of the ballot-box ? Are citizens to go around to these divisions to secure an honest election and have the distillers after them ? Are they to go and see how far the law is complied with by men who have taken an oath to comply with it ? Are these citizens to go among people where the laws of the United States cannot be executed until a file of marines is marched among them ? These citizens would have the same chance as those who went to hunt for stills ; they would be chased and hunted across the lots, and have the doors slammed in their face. The nationality of these men is proven--wild men, in many respects, voting in swarms. You will examine this testimony ; you will not say that because we have not gone around and found whether the people lived there, therefore this is a valid election. This is the action of citizens, and the only case I know of where it is purely such, and they will not be told that they must incur an expense incident to such an investigation, attended with damage and pro-

ductive of no satisfactory results. It has never been decided that such conduct as we complain of does not vitiate an election. It has been decided that a failure to mark the letter "V" does not vitiate it, but not that the entire failure to look at the book will not. It has not been decided that a failure to look at the book and take proof of the residence of the voters does not vitiate the election. In *Thompson vs. Ewing*, the leaning was to throw out the divisions if the proof had been sufficient to establish the allegation that the officers had thus neglected their duties. Judge Ludlow did throw them out upon the evidence that was submitted, although it did not begin to show it to the same extent as in this case.

If the Court decide now that this conduct does not vitiate the election, this disregard of the law will increase until our elections will become one widespread mass of corruption.

SPEECH OF HON. WM. M. MEREDITH.

Mr. Meredith said: May it please the Court, it is, I won't say, one of the evils, for in these times it is not lawful, I suppose, to say that anything is an evil that the people choose to do, but it is one of the inconveniences of an elective judiciary, that it is a very frequent occurrence that the gentlemen composing the Bench belong to one or the other of the political parties, the contest between which is the question to be decided. This circumstance requires of the Bench the exercise of the highest qualities of judicial integrity. I shall say no more on that subject, except that judicial integrity is as much prostituted by going against political friends, when the case is just on their side, as it would be to cast it the other way in consequence of political feelings. If there is a Judge not capable of raising his mind to that point of integrity that he can disregard all considerations of party, he should resign, and not leave to his progeny a name disgraced by the example he has set.

Now, if your Honors please, I don't readily understand where we are in regard to the points of law in this case, because I had supposed that they had long since been settled and adjudicated in the most decided form in that case where there was a unanimity of opinion, and where it was laid down as law that if there was the slightest evidence of frauds or of such gross irregularities as to render it impossible to rely upon the results

given by the officers, that either of these grounds would be sufficient reason for throwing out the poll. Judge Ludlow went further. He not only laid down that principle, but, in his view, the evidence in that case did amount to proof of such irregularities, and, therefore, he was in favor of striking out the division. This was the unanimous opinion of the Court, entirely above and beyond party. The decision of that case was ultimately unanimous, the striking out of that poll still leaving a majority for the party who received the office. But on the same question of law now before you, on this record, they were unanimous that where there was either the slightest frauds, or such gross irregularities that show that the officers were not to be depended upon, the poll should be stricken out. Why? For in no other way can you do justice to the citizens of the County. When we talk about *injustice*, what are you doing when you allow these irregularities to pass, to destroy the rights of the whole body of citizens who have claims in this matter.

It might have been supposed that this question, thus settled, would not have been again raised. And if your Honors will look at the record of the case before you, you will find some reason to be surprised that it is attempted to be again raised by the gentlemen representing the other side. You will see that the respondents themselves have upon less ground asked you to strike out one hundred and two polls—not eight—at which eighty thousand votes were cast! Nobody could have suspected that, with their present views of the law, they could have presented this and asked the Court to do such a monstrous thing as that would be—in their view! They then seemed to think that less irregularities than we complain of would be sufficient to strike out a poll. But when they came to the proof, they offered no evidence. That marks the line between the just and the unjust—make an allegation and be unable to prove it. The logical conclusion that they wish to draw is, if your adversary has made a similar allegation, and has proved it, it is absurd to let him have any benefit from it.

But we come a little later down. The proof on the part of the contestants is given. It is proof of what happened at these polls; it is proof of what happened inside of these polls, where the parties who attended were on the opposite side; it is proof of what took place that could be seen and known by parties outside. The respondents, having heard the evidence upon the part of the contestants, give none at all themselves. They stand upon the proof as presented by the contestants. Therefore I need not say that you are left to take what the witnesses have

stated and draw conclusions from them. These witnesses are not to be doubted, for there was no denial of their testimony. There was abundant opportunity for denial if any could be presented by the other side. Then we go a step further in this case. Mr. Gerhard, who opened the case on the part of the respondents, treated it as what? A demurrer to evidence! They could not dispute the law, but they got at last to the point where they denied your power to do what? To do what they had asked you to do themselves. He denied, not that the law warranted it, but that the evidence in the case was sufficient.

It is a very late day to ask us to go back behind the cases and tear up by the roots the principles we find laid down in the numerous cases decided in the past. It is fortunate that the cases cited did not bear out the gentlemen in their view of the law; fortunate that the case has not before been presented to justify a Court in throwing out a poll. The question is, *whether this case does present such a case?* Unless you overturn all these decisions, and everything done by your predecessors, it is impossible for you to do otherwise, except apply the facts to what is the established law.

You have the power of a Committee of the Legislature—that is the power to decide exactly what they decide—the legality of an election—who has the majority of the votes. You have no power beyond that. You cannot order a new election any more than a Committee of the Legislature. Your decision is subject to review upon matters of law, appearing upon the record, while the decision of a committee is not.

Now, how are you to get at it? I don't want to go into the details of this election. You have heard enough of it. It has been fully and clearly stated on both sides. But suppose you find in a division the proceedings commenced by the Judge taking the Assessor's list, that is sent there as a guide, and clapping it under him and sitting on it—never looking at it. Presently he has occasion to go out for a few minutes, and then the book disappears, and is not seen again the whole day. There is some political wretch—I presume he may be called so—standing outside, who has conceived the idea that there is an *election*, and he challenges, and has a copy of this book; but about 11 o'clock, or thereabouts, he has occasion to leave the window—properly, perhaps—and *his* book is carried off. The election—if you can call it so—goes on the whole day. How? *One* challenge in the course of a day, and I am not sure but that when the challenge was made, it was met with profane and significant language, coupled with the query, “what was that

done for?" At any rate, there was no repetition; no oath was administered. Recollect where this was. We are in the Eighth, Seventh and Sixth Divisions of the Fourth Ward; Seventh of Third Ward, and the Fourth of Twenty-fifth Ward. Not a naturalized voter in any of these Wards! Not a naturalization paper—not a question asked. Was there any crowd or pushing? Oh, no. The voter walked up quietly, and without molestation, and they voted one every half a second. The voter would go up and put in his ballot, and sometimes they would apparently forget to ask for a name, and after he left, they would call after him, but the voter went on and somebody in the crowd would give a name for him. Is that an election? There are forty of such instances in one division. I think one citizen is there as having voted three times. In one division, in more than forty cases, when the citizen went to vote, he found he had voted already. They did not tick a single voter, but they put by the list and said, "we'll tick them after the election." How could they do it after the election? By memory? How are the inhabitants of the other 190 precincts in this City and county, who have their rights at stake, to be protected, if this thing is to be allowed? As well abandon the polls, and allow the ballots to be put in the box by the wholesale, without any voter going to the polls.

That these men who have been guilty of these frauds should be brought to punishment is undoubted; but that punishing the man will protect the rights of the citizens is entirely a mistake. The citizens ask that there may be a due election—that the candidates whom a majority of the people favor shall have the offices. Punishing the officer will not reach that. Punishing the officers will not establish that precedent, which, if not established, must ultimately and rapidly turn our elections into a farce.

It is impossible to look back to the course of things in times past without grief and sorrow, and the only chance of future safety lies in the still untouched fidelity of the great body of the inhabitants of this county. So long as all our classes, including the working classes, (and excluding those called the "dangerous classes," having no homes, no habitations, no assimilation with the body of the people) so long as these are provided with comfortable houses, as they are in Philadelphia, we have a security here that no other large city on the earth has. Let the channels of justice be pure and undefiled; let the people know that their rights shall be protected, and that their elections shall not be the plaything of parties, but shall be fair

and honest expression of popular opinion, and all men of all parties will thank the judiciary that gives these assurances. Although a man of decided political principles—and I hold it to be the duty of every citizen to take part in politics—yet I trust that I have never been so warm a partisan as to do injustice to men who differ in opinion with me. And I can say that I have never seen the day when there was not the same honesty of purpose in the party opposed to me as in that to which I belong. Misled, I have believed them; deceived, I have believed them; but the mass of the citizens of all parties desire to do what is right and fair and just, and desire to protect the rights of the people. They will thank any tribunal that will take a decided step in a case where the facts are undisputed. Upon the other hand, if, upon insufficient evidence—if upon slight ground—as was proposed in some of the cases quoted—the Court would undertake to set aside a poll when justice could be done without it, the masses of both parties would resent such a proceeding.

If the views which have impressed me upon examining the evidence, which is not contradicted, have affected your Honors, I shall look with confidence for your decision.